



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12916684

Date: JUNE 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an elementary school teacher, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ Therefore, we need not consider the alternative claim of exceptional ability in the sciences, arts, or business. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner worked at various elementary schools in Brazil from 2000 to 2013, and then entered the United States in 2012 to study at the University of [REDACTED] first for a bachelor's degree in psychology and then for a master's degree in science education. Her claimed experience in the United States consists of graduate student internships and volunteering as a tutor "teaching Portuguese to children from the Brazilian community in [REDACTED]. As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

For the reasons discussed below, we agree with the Director that the Petitioner has established the substantial merit of her proposed endeavor, but not its national importance, under the first prong of the *Dhanasar* analytical framework.⁴

In a statement intended to describe her proposed endeavor, the Petitioner states:

I intend to continue using my expertise in the field of education and implementing my knowledge in Elementary Education and Language. . . .

I propose to use my skills and knowledge gained through my professional experience in the Education System, and my broad experience within my field, and to contribute to the educational well-being of the United States. I intend to offer my expertise to areas that are experiencing severe shortage of teachers.

A separate statement indicates that the Petitioner "intends to advance her career as an Educator, developing curriculum for children with special needs and teaching Portuguese that will enhance, substantially, the United States Education System." The Petitioner asserts that her intended work includes the following:

- Assist and consult US school groups looking to expand or enter the Private Brazilian Education system

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a master's degree in science education from the University of [REDACTED] in 2017.

⁴ While we may not discuss every document submitted, we have reviewed and considered each one.

- Develop and implement lessons, assessments, evaluations, and activities
- Develop differentiating lesson plans based on the ability of the child
- Work in Special Education
- Teach Portuguese and English

Most of the listed items appear to be typical responsibilities for school teachers in the same specialty as the Petitioner. Such teachers are, as a rule, subject to the job offer requirement, including labor certification. Performing the duties inherent to the position is not a presumptive factor in favor of waiving that requirement. Regarding the first item, the Petitioner asserts:

Brazil's market for private elementary schools is highly fragmented and would potentially be an opportunity for acquisition by US school groups. . . .

Based on [her] experiences, she will be able to help companies and education institutions who are or wanting to invest more into private education in Brazil. She will be able to utilize her skills and knowledge as a bilingual teacher and also work as a special education teacher. [The Petitioner] can make contributions of major significance to the education system in the United States.

The Petitioner does not explain how working with private schools in Brazil would contribute "to the education system in the United States."

The Petitioner submits letters from various individuals who attest to her skills as a teacher but do not indicate that her work has more broadly affected the field of education, or explain how it would do so in the future. The direct benefit from the Petitioner's own teaching work would be largely limited to her students. In the absence of evidence of broader impact, such teaching activity does not satisfy the "national importance" element of the national interest test. *See Dhanasar*, 26 I&N Dec. at 893. The *collective* importance of early childhood and special education does not lend national importance to the classroom work of individual teachers.

The Petitioner submits information regarding what she characterizes as "a critical shortage of special education teachers and specialized instructional support personnel" in the United States. The Petitioner does not explain how her proposed endeavor would have a national impact on this shortage. The addition of one more teacher to the work force would not significantly mitigate the shortage, and the Petitioner does not show that her proposed endeavor would otherwise increase the number of teachers.

In response to a request for evidence, the Petitioner modifies her proposed endeavor, stating:

I intend to advance my proposed endeavor by working in the United States as an *Elementary School Teacher*. . . .

. . . .

I hope to educate new educators and develop new techniques and technologies in education that will provide a safe and warm environment for all children. So, after I

complete my 6th year degree and/or my doctorate I aspire to become an active member of the academy by teaching education at the college level. . . .

. . .

Eventually, I do have a plan to start a business. It would be a Portuguese-Spanish-English language and cultural center. A place where children and adults would come to learn English, or to learn their heritage language, and the center would promote studies and discussions on the connection between the Hispanic, Brazilian/Portuguese and American languages and cultures. I believe it would begin small and grow in time, and it would generate jobs, because I will need teachers and staff with diverse cultures, from different countries, to work with our clients.

The newly claimed elements regarding “teaching education at the college level” and founding a “language and cultural center” represent significant departures from the plan that the Petitioner first articulated in her initial submission. Even then, the Petitioner does not explain how these new plans would produce direct benefits beyond the local level. The Petitioner has not established that classroom instruction, whether of young children or college students, produces direct national benefits. Likewise, the Petitioner has not shown how the activities of one more college-level instructor would have a discernible impact on a national teacher shortage, even if the Petitioner had shown that a lack of such instructors had caused the teacher shortage.⁵ The Petitioner provides minimal details about the hypothetical cultural center, and does not explain how its activities would be fundamentally different from language instruction in a classroom setting.⁶

On appeal, the Petitioner does not refer directly to the substantial revisions to her proposed endeavor. Instead, she makes the broad and general assertion that her expertise in education will produce national benefits.

The Petitioner asserts, on appeal, that the Director did not give sufficient weight to the Petitioner’s “vast contributions in the education sector,” but the appellate brief does not identify those contributions. Letters from colleagues and administrators attest to the Petitioner’s skill and dedication as a teacher, but do not show how that work has been, or will be, of national importance.

The Petitioner states that she submitted articles “demonstrating the national importance of the Petitioner’s proposed endeavor.” Those articles, however, did not mention the Petitioner or discuss her endeavor specifically. They discussed education in more general terms, but there is no blanket waiver for teachers, and the intention to carry on teaching is not a proposed endeavor with national

⁵ We agree with the Director that a shortage of qualified workers in a given occupation is generally grounds for obtaining, rather than waiving, a labor certification, but we need not explore this issue in detail as it relates most closely to the third *Dhanasar* prong rather than the first prong under discussion here.

⁶ The record does not show that the Petitioner has any experience working in such a cultural center, let alone founding and operating one, and it does not show that she has taken any steps to start the business or to secure the necessary resources to do so. If this case had proceeded past the first *Dhanasar* prong, we would have concluded that the Petitioner has not shown that she is well-positioned to advance the proposed endeavor. Likewise, the Petitioner states her intention to participate in “the development and implementation of quality education programs,” but the record does not establish that any entity beyond the local level has shown any interest in engaging the Petitioner’s services in this way.

importance. We agree with the Director’s conclusion that the Petitioner did not show that her “proposed work has implications beyond her students.” Unsubstantiated references to “ripple effects” do not suffice to show that the Petitioner’s proposed endeavor, in particular, is of national importance.

For the above reasons, we conclude that the Petitioner has not established the national importance of the proposed endeavor. This conclusion, by itself, decides the outcome of the appeal, and therefore we reserve the appellate arguments regarding the remaining *Dhanasar* prongs.⁷

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

⁷ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).